REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

SUMISETSU PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7844

Members:

BAUTISTA, Chairperson,
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

SEP 6 2011
10:30 a.m.

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by Sumisetsu Philippines, Inc. (hereafter "petitioner") praying for the refund or issuance of a tax credit certificate (TCC) for its creditable input value-added taxes (hereafter "input VAT") paid and attributed to its effectively zero-rated sales for the third and fourth taxable quarters of 2006.

THE PARTIES

Petitioner is a corporation duly organized under Philippine laws and engaged in the business of providing electrical and mechanical services for electrical transmission and distribution systems, air conditioning and ventilation systems, telephone and communications systems, and other allied services, with principal office located at the 4th/Floor, Glass Tower, 115 C. Palanca St., Legaspi Village, Makati City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. She may be served with summons, pleadings and other legal processes at the BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

The facts of the case are, as follows:

In 2006, petitioner entered into business transactions, among which is the rendition of electrical and mechanical services to clients registered with the Philippine Economic Zone Authority (PEZA), as well as to non-resident foreign entities.

As a result of said transactions, petitioner allegedly incurred input VAT which are attributed and allocated to effectively zero-rated sales in the amount of P12,693,370.71 and P14,819,996.85 for the 3rd and 4th quarters of 2006, respectively.

On the following dates, petitioner filed with the BIR its Original Quarterly VAT Returns for the third and fourth quarters of 2006, respectively:

Taxable Quarter	Date of Filing of Original Return
3rd	October 23, 2006
4th	January 18, 2007

On July 25, 2007, petitioner filed its administrative claim for refund of unutilized input VAT for the third and fourth quarters of taxable year 2006, together with the supporting documents.

In view of respondent's inaction, on October 22, 2008, petitioner filed the present Petition For Review.

In her Answer, respondent alleged by way of special and affirmative defenses:

> "5. Granting arguendo that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.

6. Petitioner failed to demonstrate that the alleged tax sought for refund or tax credit has been erroneously or illegally collected in violation of the tax laws relied upon by the petitioner.

7. Sales of goods, properties or services to PEZA registered enterprises does not qualify as zero-rated sale.

8. Well-settled is the rule that the interpretation placed upon a statute by executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, the courts will not countenance administrative issuances and rulings that override, instead of remaining consistent and in harmony with the law which they seek to apply and implement (Philippine Bank of Communications vs. Commissioner of Internal Revenue, 302 SCRA 241).

9. Taxes paid and collected are presumed to have been made in accordance with law and regulations; hence, not refundable.

10. It is incumbent upon the petitioner to show that it has complied with the provisions of Sections 108 and 112 in relation to Section 229 of the 1997 Tax Code, as amended.

11. In an action for tax refund/credit, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim.

12. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such; they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

Petitioner presented Cecilia S. Magalona, Amy R. Balbin, Marichu M. Go, Leonard Lyle M. Tabalon, and Edwin F. Ramos, as witnesses, and documentary evidence marked as Exhibits "A" to "U", inclusive of their submarkings, which were admitted by the Court in its Resolutions dated March 17, 2010 and July 12, 2010, except for Exhibits "R-1Q-278 to R-1Q-307", "R-1Q-420 to R-1Q-431", "R-1Q-589 to R-1Q-703', and "R-2Q-1833 to R-2Q-2136".

On the other hand, respondent was declared to have waived her right to present evidence for the repeated failure of her counsel to appear despite notice.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich the case shall be deemed submitted for decision.

On August 11, 2010, petitioner filed its "Memorandum". Respondent failed to file her memorandum within the prescribed period; hence, in a Resolution dated September 14, 2010, the Court considered the petition submitted for decision.

On September 21, 2010, this case was originally raffled for study and report to Associate Justice Lovell R. Bautista. During the deliberation of the case, Associate Justice Lovell R. Bautista voted to partially grant the petition; however, Associate Justice Olga Palanca-Enriquez registered her dissent, and voted to deny the petition, to which Associate Justice Amelia Cotangco-Manalastas concurred. Hence, on June 28, 2011, this case was re-assigned to Associate Justice Olga Palanca- Enriquez to write the majority opinion.

ISSUE

As stipulated by the parties, the following is the issue for this Court's consideration:

> WHETHER SUMISETSU IS ENTITLED TO A TAX REFUND OR A TAX CREDIT CERTIFICATE FOR THE INPUT VAT PAYMENTS ATTRIBUTABLE AND ALLOCATED TO SERVICES RENDERED TO CERTAIN PEZA-REGISTERED ENTITIES FOR THE THIRD AND FOURTH QUARTERS OF 2006 IN THE AGGREGATE AMOUNT OF P27,513,367.56.

Principal Issue

The foregoing issue raised by both parties boils down to the principal issue of whether or not petitioner is entitled to a refund or the issuance of a TCC for its excess and unutilized input VAT for the third and fourth quarters of taxable year 2006 in the aggregate amount of P27,513,367.56.

THE COURT'S RULING

The petition has no merit.

Before resolving the principal issue raised in this petition, we deem it necessary to determine first whether the present Petition for Review was timely filed.

In this regard, *Section 112 of the NIRC of 1997, as amended,* provides:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* –

(A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made,** apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx

(C)Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals."

In the recent case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., GR No. 184823, October 6, 2010, the Supreme Court ruled that the second paragraph of *Section 112(C) of the NIRC of 1997, as amended,* envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA.

In the case at bench, records show that on July 25, 2007, petitioner filed its administrative claim for refund for the third and four quarters of 2006, which is within the two (2)-year prescriptive period.

From July 25, 2007, which is also the date petitioner submitted supporting documents, together with the aforesaid application for refund, the Commissioner of Internal Revenue has one hundred twenty (120) days or until November 22, 2007 within which to decide the administrative claim for refund. Within thirty (30) days from the lapse of the 120-day period or from November 23, 2007 to December 22, 2007, petitioner should have elevated its claim for refund to this Court, pursuant to *Section 112 (C) of the NIRC of 1997, as amended,*

Records show, however, that petitioner filed the present Petition for Review, on October 22, 2008 only, which is 304 days way beyond the prescribed 30-day period to appeal to this Court.

In the case of *Ker and Company, Ltd. vs. Court of Tax Appeals (4 SCRA 163; also cited in Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, 491 SCRA 221),* the Supreme Court ruled that while the right to appeal a decision of the Commissioner to the CTA is merely a statutory remedy, nevertheless, the requirement that it must be brought within 30 days is jurisdictional.

Settled is the rule that courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings *(Ace Publications vs. Commissioner of Customs, 11 SCRA 147).*

For all the foregoing, the Court has no alternative, but to dismiss the instant Petition for review for having been filed 304 days way beyond the 30-day prescribed period; thus, this Court has not acquired jurisdiction over the same.

In view of the above conclusion, we find no need to resolve the other issues raised by petitioner, for being moot and academic.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE,** and, accordingly **DISMISSED** for having been filed late.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

(With Separate Concurring and Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice